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**155 CORPORATE DRIVE, LLC**

**and**

**COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**

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**HEAD LEASE AGREEMENT**

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Dated as of August 28, 2013

Premises: 155 Corporate Drive  
Orangeburg, New York 10962

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## HEAD LEASE AGREEMENT

**THIS HEAD LEASE AGREEMENT**, made as of the 28<sup>th</sup> day of August, 2013 (this "Head Lease"), by and between **155 Corporate Drive, LLC**, a New Jersey limited liability company duly registered and authorized to transact business in the State of New York (the "Company"), having its principal office at 570 Commerce Boulevard, Carlstadt, New Jersey 07072, as lessor, and **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State of New York (the "Agency") having its principal office at Two Blue Hill Plaza, Pearl River, New York 10965, as lessee (capitalized terms used in this Head Lease and not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement referred to below):

### WITNESSETH:

**WHEREAS**, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes and which may include or mean an industrial pollution control facility to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 564 of the 1980 Laws of New York, as amended (together with the Enabling Act, the "Act"), for the benefit of the County of Rockland (the "County") and the inhabitants thereof; and

**WHEREAS**, on March 18, 2013, the Company submitted an Application for Financial Assistance to the Agency for financial assistance with respect to the construction of a new building and the acquisition of machinery and equipment related thereto, all to be used for a critical data center facility and administrative offices, as more fully described in the application and supplemental materials, at 155 Corporate Drive, Town of Orangetown, New York (the "Leased Premises") for a total cost of \$135,600,000.00 (the "Project"); and

**WHEREAS**, the Company is the owner of the Premises, which shall be leased by the Company to the Agency on the terms and conditions set forth in this Head Lease; and

**WHEREAS**, the Agency's interests in the Premises shall simultaneously be subleased by the Agency to the Company pursuant to a Lease Agreement;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and representations hereinafter contained, the Company and the Agency hereby agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred, but any such obligation shall be payable by the Agency solely out of the lease rentals, revenues and receipts payable by the Company under the Lease Agreement):

#### **ARTICLE I**

The Company does hereby lease to the Agency, and the Agency hereby leases from the Company, the land and property described in Exhibit A hereto, including all improvements thereto, (the "Leased Premises"), for the term herein provided and for use as provided in the Lease Agreement. It is the intention of the Company and the Agency that leasehold title to all improvements hereafter constructed by the Company shall vest in the Agency as and when the same are constructed. Accordingly, the Company and the Agency agree that the Agency shall hold leasehold title pursuant to this Head Lease to all improvements hereafter constructed by the Company constituting the Leased Premises.

#### **ARTICLE II**

The term of this Head Lease shall commence on August 28<sup>th</sup>, 2013 and expire on the earliest of (i) August 27<sup>th</sup>, 2028 or (ii) the expiration or earlier termination of the Lease Agreement.

#### **ARTICLE III**

The sole rental hereunder shall be the single sum of ten dollars (\$10.00), receipt of which is hereby acknowledged by the Company.

#### **ARTICLE IV**

The Company hereby delivers possession to the Agency of the Leased Premises.

#### **ARTICLE V**

The Company represents and warrants that the execution and delivery by the Company of this Head Lease and the performance by the Company of its obligations under this Head Lease and the consummation of the transactions herein contemplated have been duly authorized by all requisite action on the part of the Company and will not violate (i) any provision of law, or any order of any court or agency of government, (ii) articles of organization or operating agreement of the Company, or (iii) any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or would result in the imposition of any lien, charge or encumbrance of any nature whatsoever on the Leased Premises other than Permitted Encumbrances (as defined in the Lease Agreement). The Company represents and warrants that it has full right and lawful authority to enter into this Head Lease for the full term hereof. The Company covenants and agrees that, so long as the Lease Agreement shall be in full force and effect, the Agency shall have, hold and enjoy a valid

leasehold estate in the Leased Premises during the term hereof, and the Company shall from time to time take all necessary action to that end. Further, this Head Lease will automatically terminate if the Lease Agreement should terminate.

#### ARTICLE VI

Neither the Agency nor the Company shall assign or transfer this Head Lease, nor sublease the whole or any part of the Leased Premises, nor subject this Head Lease to any lien, claim, mortgage or encumbrance (other than Permitted Encumbrances), in any manner, nor sell, assign, convey or otherwise dispose of the Leased Premises or any part thereof, during the term of this Head Lease, in any manner, to any Person, except that (i) the Agency will sublease the Leased Premises to the Company pursuant to the Lease Agreement, (ii) the Agency may grant a mortgage and security interest herein to a lender at the Company's request, and (iii) the Company may effect releases of portions of the Leased Property or Premises pursuant to Sections 4.2 and 6.4 of the Lease Agreement.

#### ARTICLE VII

Except for the Lease Agreement, this Head Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Head Lease. This Head Lease may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Head Lease or any obligations under this Head Lease, unless such agreement is set forth in a written instrument executed by the Company and the Agency. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

#### ARTICLE VIII

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

If to the Company, to

**155 Corporate Drive, LLC**  
570 Commerce Boulevard  
Carlstadt, New Jersey 07072  
Attention: Michael Pembroke  
Tel: 201-487-5657  
Fax: 201-487-6440

with a copy to

Richard Berger, Esq.  
570 Commerce Boulevard  
Carlstadt, New Jersey 07072  
Tel: 201-487-5657  
Fax: 201-487-6440

If to the Agency, to

County of Rockland Industrial Development Agency  
Two Blue Hill Plaza  
Pearl River, New York 10965  
Attention: Executive Director  
Tel: (845) 735-0205  
Fax: (845) 732-9732

with a copy to:

Montalbano, Condon & Frank, P.C.  
67 North Main Street  
New City, New York 10956  
Attn: Brian J. Quinn, Esq.  
Tel: (845) 634-7010  
Fax: (845) 634-8993

If to the Lender (so long as  
the Mortgage remains  
outstanding), to:

Wells Fargo Bank, National Association  
120 Mountain View Boulevard  
Suite 200, 2<sup>nd</sup> Floor  
Basking Ridge, New Jersey 07920  
Attention: Kimberly B. McKee  
Tel: (908) 542-2085  
Fax: (908) 542-2092

with a copy to:

Emmet, Marvin & Martin, LLP  
177 Madison Avenue  
Morristown, New Jersey 07960  
Attention: Sean Carlin, Esq.  
Tel: (973) 538-5600  
Fax: (973) 538-6448

The Agency and Company may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this

Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party. All notices given hereunder, so long as the Mortgage remains outstanding shall be delivered with a copy to Lender.

Any notice by the Agency or the Company may be given on behalf of such party by its attorney.

#### **ARTICLE IX**

This Head Lease shall be governed by, and construed in accordance with, the laws of the State of New York.

The terms of this Head Lease are and shall be binding upon and inure to the benefit of the Agency and the Company and their respective successors and assigns.

If any one or more of the provisions of this Head Lease shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Head Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

#### **ARTICLE X**

This Head Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

#### **ARTICLE XI**

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Head Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, employee or agent of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation it may incur shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred.

#### **ARTICLE XII**

The Agency and the Company agree that this Head Lease or a memorandum hereof shall be recorded by the Agency in the appropriate office of the County Clerk of the County of Rockland.

#### **ARTICLE XIII**

The use of the Leased Premises, and all other rights, duties, liabilities and obligations of the Company and the Agency with respect thereto and including the construction, equipping and furnishing of the Project, and the use, operation, leasing and financing of the Project, not fixed in this Head Lease, shall be as set forth in the Lease Agreement.

**ARTICLE XIV**

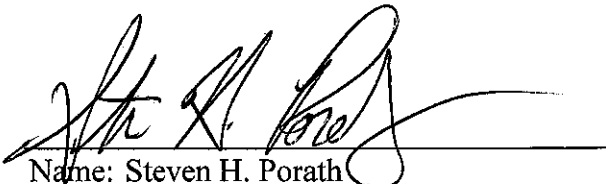
The Agency and Company acknowledge and agree that this Head Lease, and all modifications, amendments, renewals or extensions thereof, is subject and subordinate to the Mortgage and that the Agency's rights under this Head Lease and all modifications, amendments, renewals or extensions thereof, are subject and subordinate to the Lender's rights under the Mortgage; provided however that the foregoing shall not impose or imply any additional obligations on the Agency not expressly set forth in the Mortgage.

**ARTICLE XV**

The Agency and the Company do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement and venue in any such action shall be the Supreme Court of the State of New York, Rockland County. The provision of this Agreement relating to waiver of a jury trial and the venue in any such action shall survive the termination or expiration of this Agreement.

**IN WITNESS WHEREOF**, the Company has caused its name to be subscribed hereto by its managing member, and the Agency has caused its corporate name to be hereunto subscribed by its authorized representative, all being done as of the year and day first above written.

**COUNTY OF ROCKLAND INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Steven H. Porath  
Title: Executive Director






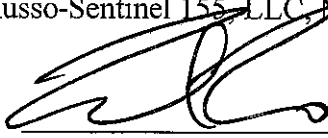


**155 CORPORATE DRIVE, LLC**

By: Russo-Sentinel 155, LLC, Manager

Attest/Witness:

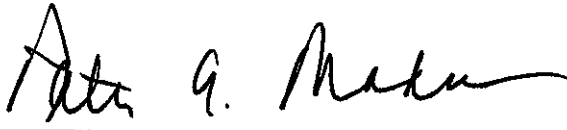
  
\_\_\_\_\_  
Name: Richard Berger, Esq.  
Title: Lessee Counsel

By:   
\_\_\_\_\_  
Name: Edward Russo  
Title: Manager



STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF ROCKLAND )

On the 28<sup>th</sup> day of August in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared **STEVEN H. PORATH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



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Notary Public

PATRICIA A. MADONNA  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 4874131  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES NOVEMBER 3, 2014

**EXHIBIT A**

**DESCRIPTION OF LEASED PREMISES**

See Attached

# EXHIBIT A

## SCHEDULE "A"

PARCEL I (FOR INFORMATION ONLY: LOT 18)

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF ORANGETOWN, COUNTY OF ROCKLAND, STATE OF NEW YORK, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A CONCRETE MONUMENT ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF CORPORATE DRIVE WHERE SAID LINE IS INTERSECTED BY THE DIVIDING LINE BETWEEN LANDS N/F YOMATO SCIENTIFIC AMERICA (TAX LOT 73.15-1-9) AND LANDS N/F NYNEX CORPORATION (TAX LOT 73.15-1-18), AND FROM SAID BEGINNING POINT RUNNING THENCE,

1. ALONG SAID DIVISION LINE, SOUTH 31° 27' 57" WEST A DISTANCE OF 526.26 FEET TO A CONCRETE MONUMENT FOUND, THENCE
2. ALONG THE DIVISION LINE BETWEEN THE STATE OF NEW YORK ROCKLAND COUNTY (TOWN OF ORANGETOWN) AND THE STATE OF NEW JERSEY BERGEN COUNTY NORTH 42° 33' 27" WEST A DISTANCE OF 929.88 FEET TO A POINT, THENCE
3. ALONG THE LANDS OF NYNEX CELLCO PARTNERSHIP (TAX LOT 73.15-1-19) NORTH 24° 56' 33" EAST A DISTANCE OF 656.35 FEET TO A POINT, THENCE
4. CONTINUING ALONG LANDS OF NYNEX CELLCO PARTNERSHIP NORTH 55° 35' 00" EAST A DISTANCE OF 199.90 FEET TO A POINT, THENCE
5. RUNNING ALONG THE BED OF A PRIVATE DRIVE ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 391.00 FEET, AND TURNING A CENTRAL ANGLE OF 21° 47' 29", FOR AN ARC LENGTH OF 148.50 FEET, THE CHORD OF WHICH BEARS SOUTH 19° 31' 16" EAST FOR A DISTANCE OF 147.60 FEET TO A POINT, THENCE
6. CONTINUING ALONG THE BED OF A PRIVATE DRIVE, SOUTH 08° 38' 00" EAST A DISTANCE OF 123.91 FEET TO A POINT, THENCE

RUNNING THE FOLLOWING COURSES AND DISTANCES ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF CORPORATE DRIVE:

7. ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 65.00 FEET, AND TURNING A CENTRAL ANGLE OF 144° 38' 28", FOR AN ARC LENGTH OF 164.09 FEET, THE CHORD OF WHICH BEARS SOUTH 09° 02' 57" WEST FOR A DISTANCE OF 123.86 FEET TO A POINT; THENCE
8. ALONG A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 25.00 FEET, TURNING A CENTRAL ANGLE OF 49° 06' 40", FOR AN ARC LENGTH OF 21.44 FEET, THE CHORD OF WHICH BEARS SOUTH 38° 42' 57" EAST FOR A DISTANCE OF 20.78 FEET TO A POINT; THENCE
9. ALONG A REVERSE CURVE TO THE LEFT WITH A RADIUS OF 607.00 FEET, TURNING A CENTRAL ANGLE OF 28° 24' 43", FOR AN ARC LENGTH OF 301.00 FEET, THE CHORD OF WHICH BEARS SOUTH 28° 21' 59" EAST FOR A DISTANCE OF 297.93 FEET TO A POINT; THENCE
10. SOUTH 42° 34' 20" EAST FOR A DISTANCE OF 382.75 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTINUED...

SCHEDULE "A" CONTINUED

PARCEL II (FOR INFORMATION ONLY: LOT 1)

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF ORANGETOWN, COUNTY OF ROCKLAND, STATE OF NEW YORK, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE RIGHT OF WAY LINE OF CORPORATE DRIVE WHERE SAID LINE IS INTERSECTED BY THE DIVIDING LINE BETWEEN LANDS N/F NYNEX CORPORATION (TAX LOT 73.19-1-1) AND LANDS N/F NYNEX CELLCO PARTNERSHIP (TAX LOT 73.19-1-19) AND FROM SAID BEGINNING POINT RUNNING THENCE,

1. ALONG LANDS OF NYNEX CELLCO, NORTH  $64^{\circ} 02' 50''$  EAST A DISTANCE OF 79.83 FEET TO A POINT, THENCE
2. ALONG THE LANDS N/F TOWN AT ORANGETOWN (TAX LOT 73.15-1-17), SOUTH  $58^{\circ} 41' 55''$  EAST A DISTANCE OF 536.00 FEET TO A POINT, THENCE
3. ALONG LANDS N/F VANILLA BEAN INC. (TAX 73.19-1-2), SOUTH  $47^{\circ} 25' 40''$  WEST A DISTANCE OF 288.29 FEET TO A POINT, THENCE
4. ALONG THE SAID NORTHEASTERLY RIGHT OF WAY LINE OF CORPORATE DRIVE, NORTH  $42^{\circ} 34' 20''$  WEST A DISTANCE OF 283.05 FEET TO A POINT, THENCE
5. CONTINUING ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF CORPORATE DRIVE ON A CURVE TO THE RIGHT WITH A RADIUS OF 547.00 FEET, TURNING A CENTRAL ANGLE OF  $27^{\circ} 45' 01''$  FOR AN ARC LENGTH 264.93 FEET, THE CHORD OF WHICH BEARS NORTH  $28^{\circ} 41' 50''$  WEST FOR A DISTANCE OF 262.35 FEET TO THE POINT AND PLACE OF BEGINNING.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

**FOR CONVEYANCING ONLY: TOGETHER** with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.